

AMENDED IN ASSEMBLY JUNE 15, 2011

AMENDED IN SENATE MAY 26, 2011

SENATE BILL

No. 8

Introduced by Senator Yee

(Principal coauthor: Assembly Member Block)

(Coauthor: Senator Calderon)

(Coauthors: Assembly Members Ammiano, Beall, Huffman, Portantino, Silva, and Yamada)

December 6, 2010

An act to add Article 7 (commencing with Section 72690) to Chapter 6 of Part 45 of Division 7 of, to add Article 1.5 (commencing with Section 89913) to Chapter 7 of Part 55 of Division 8 of, and to add Chapter 14 (commencing with Section 92950) to Part 57 of Division 9 of, Title 3 of, the Education Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 8, as amended, Yee. Public records: auxiliary organizations and UC campus foundations.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless those records are exempt from disclosure.

~~Existing law establishes the segments of public postsecondary education in the state, including, but not limited to, the University of California administered by the Regents of the University of California and the California State University administered by the Trustees of the California State University.~~

Existing law establishes the segments of the public postsecondary education system in the state, including the University of California

administered by the Regents of the University of California, the California State University administered by the Trustees of the California State University, and the California Community Colleges administered by the Board of Governors of the California Community Colleges.

This bill would require records maintained by an auxiliary organization of the *governing board of a community college district, the Board of Governors of the California Community Colleges, and California State University*, as defined, or a University of California (UC) campus foundation, as defined, to be available to the public to inspect or copy at all times during the office hours of the organization or foundation, as specified. The bill would require an auxiliary organization and a UC campus foundation to follow specified requirements when fulfilling or denying a request for a record. The bill would prohibit specified records maintained by an auxiliary organization or UC campus foundation from being subject to disclosure. The bill would prohibit an auxiliary organization *of the California State University* from disclosing trade secrets, as defined, and would require this information to be redacted from the organization's records before disclosure. The bill would provide specified judicial relief to persons seeking disclosure of records from an auxiliary organization or a UC campus foundation pursuant to this bill. The bill would require a disclosure of a record, which is exempt from disclosure, by an auxiliary organization or a UC campus foundation to constitute a waiver of the exemptions provided by this bill with regard to that record, except as specified. The bill would ~~prohibit an auxiliary organization and a UC campus foundation from allowing another party to control the disclosure of a disclosable record~~ *provide that a contract entered into after the effective date of this bill, which would prevent the disclosure of information required to be disclosed pursuant to this bill, is void and unenforceable*. The bill would provide that its provisions do not apply to any records subject to a request made pursuant to the California Public Records Act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Article 7 (commencing with Section 72690) is*
2 *added to Chapter 6 of Part 45 of Division 7 of Title 3 of the*
3 *Education Code, to read:*

4
5 *Article 7. The California Community Colleges Transparency*
6 *and Accountability Act of 2011*

7
8 72690. *The Legislature finds and declares all of the following:*

9 *(a) Access to information concerning the conduct of the people's*
10 *business is a necessary and fundamental right of every person in*
11 *this state.*

12 *(b) The auxiliary organizations of a governing board of a*
13 *community college district and of the Board of Governors of the*
14 *California Community Colleges promote and assist the colleges*
15 *by engaging in activities that are essential and integral to the*
16 *mission and purpose of the California Community Colleges.*

17 *(c) The auxiliary organizations of a governing board of a*
18 *community college district and of the Board of Governors of the*
19 *California Community Colleges are independently governed*
20 *corporations that are legally separate from the California*
21 *Community Colleges.*

22 *(d) Access to records used, owned, or maintained by these*
23 *auxiliary organizations must be balanced by the need to protect*
24 *the individual privacy rights of donors and volunteers, and to*
25 *protect an auxiliary organization's fiduciary interests.*

26 72691. *For purposes of this article, the following terms have*
27 *the following meanings:*

28 *(a) "Auxiliary organization" means those entities defined in*
29 *Sections 72670 and 72670.5.*

30 *(b) "Identifiable writing" means any handwriting, typewriting,*
31 *printing, photostating, photographing, photocopying, transmitting*
32 *by electronic mail or facsimile, and every other means of recording*
33 *upon any tangible thing, any form of communication or*
34 *representation, including, but not limited to, letters, words,*
35 *pictures, sounds, or symbols, or combinations thereof, and any*
36 *record thereby created, regardless of the manner in which the*
37 *record has been stored.*

1 72692. (a) *Records maintained by an auxiliary organization*
2 *shall be available to the public to inspect or copy at all times*
3 *during the office hours of the auxiliary organization, except as*
4 *hereafter provided. The records subject to inspection or copying*
5 *by the public pursuant to this section shall include any identifiable*
6 *writing containing information relating to the conduct of the*
7 *auxiliary organization that is prepared, owned, used, or retained*
8 *by an auxiliary organization. Any reasonably segregable portion*
9 *of a record shall be promptly available for inspection and copying*
10 *after redacting those portions exempt from disclosure by law.*

11 (b) *Upon a request for a copy of a record that reasonably*
12 *describes an identifiable record, an auxiliary organization shall*
13 *make the record promptly available within a reasonable time to*
14 *any person upon payment of fees covering only the direct cost of*
15 *duplication, except with respect to records maintained by an*
16 *auxiliary organization exempt from disclosure by law. Nothing in*
17 *this article shall be construed to permit an auxiliary organization*
18 *to delay or obstruct the inspection or copying of public records.*

19 (c) *If a member of the public requests to inspect a public record*
20 *or obtain a copy of a record held by an auxiliary organization,*
21 *the organization shall assist the person to make a focused and*
22 *effective request that reasonably describes an identifiable record*
23 *or records.*

24 72693. (a) *Upon a written request for a copy or inspection of*
25 *records, an auxiliary organization shall determine, within 10*
26 *calendar days from the receipt of the request, whether the request,*
27 *in whole or in part, seeks copies of disclosable records maintained*
28 *by the auxiliary organization and shall notify the requester in*
29 *writing without undue delay of the determination and the reasons*
30 *therefor.*

31 (b) (1) *In unusual circumstances, the time limit prescribed in*
32 *this section may be extended by a written notice by the head of the*
33 *auxiliary organization, or his or her designee, to the person making*
34 *the request that sets forth the reasons for the extension and the*
35 *date on which a determination is expected to be sent. That notice*
36 *shall not specify a date that would result in an extension of more*
37 *than 14 days. When the auxiliary organization sends the*
38 *determination, and if the auxiliary organization determines that*
39 *the request seeks disclosable public records, the auxiliary*

1 organization shall state the estimated date and time when the
2 records will be made available.

3 (2) As used in this section, “unusual circumstances” means the
4 following, but only to the extent reasonably necessary to the proper
5 processing of the particular request:

6 (A) The need to search for and collect the requested records
7 from field facilities or other establishments that are separate from
8 the office processing the request.

9 (B) The need to search for, collect, and appropriately examine
10 a voluminous amount of separate and distinct records that are
11 demanded in a single request.

12 (C) The need for consultation, which shall be conducted with
13 all practicable speed, with another agency having a substantial
14 interest in the determination of the request or among two or more
15 components of the agency having a substantial subject matter
16 interest therein.

17 (D) The need to compile data, to write programming language
18 or a computer program, or to construct a computer report to
19 extract data.

20 (c) An auxiliary organization shall justify withholding a record
21 by demonstrating that the record is exempt from disclosure by law,
22 or that, on the facts of the particular request, the public interest
23 served by not disclosing the record clearly outweighs the public
24 interest served by disclosure of the record.

25 (d) A response to a written request for inspection or copies of
26 public records that includes a determination that the request is
27 denied, in whole or in part, shall be in writing and shall set forth
28 the names and titles or positions of each person responsible for
29 the denial.

30 (e) This article shall not limit access to a public record on the
31 basis of the purpose for which the record is being requested, if the
32 record is otherwise subject to disclosure.

33 72694. (a) Unless otherwise prohibited by law, an auxiliary
34 organization that has information that constitutes an identifiable
35 record not exempt from disclosure pursuant to this chapter that is
36 in an electronic format shall make that record available in an
37 electronic format when requested by any person and, when
38 applicable, shall comply with both of the following:

39 (1) An auxiliary organization shall make an electronic record
40 available in the electronic format in which it holds the information.

1 (2) An auxiliary organization shall provide a copy of an
2 electronic record in the format requested if the requested format
3 is one that has been used by the auxiliary organization to create
4 copies for its own use or for provision to other entities or persons.
5 The cost of duplication shall be limited to the direct cost of
6 producing a copy of a record in an electronic format.

7 (b) Notwithstanding paragraph (2) of subdivision (a), the
8 requester shall bear the cost of producing a copy of the record,
9 including the cost to construct a record, and the cost of
10 programming and computer services necessary to produce a copy
11 of the record if either of the following applies:

12 (1) In order to comply with the provisions of subdivision (a),
13 an auxiliary organization would be required to produce a copy of
14 an electronic record and the record is one that is produced only
15 at otherwise regularly scheduled intervals.

16 (2) The request would require data compilation, extraction, or
17 programming to produce the record.

18 (c) If a request is for a record in a nonelectronic format, and
19 the record is also available in an electronic format, an auxiliary
20 organization may inform the requester that the record is available
21 in an electronic format.

22 (d) Nothing in this section shall be construed to do any of the
23 following:

24 (1) Require an auxiliary organization to reconstruct a record
25 in an electronic format if the auxiliary organization no longer has
26 the record available in an electronic format.

27 (2) Permit an auxiliary organization to make a record available
28 only in an electronic format.

29 (3) Require an auxiliary organization to release an electronic
30 record in the electronic form in which it is held by the auxiliary
31 organization if its release would jeopardize or compromise the
32 security or integrity of the original record, or of any proprietary
33 software with which it is maintained.

34 (4) Permit public access to records held by an auxiliary
35 organization to which access is otherwise restricted by law.

36 72695. Nothing in this article shall require an auxiliary
37 organization to disclose information that is exempt from disclosure
38 pursuant to the exemptions set forth under Sections 6254 to 6255,
39 inclusive, of the Government Code.

1 72696. (a) Notwithstanding any other law, the following
2 records maintained by an auxiliary organization shall not be
3 subject to disclosure:

4 (1) Information that would disclose the identity of a donor,
5 prospective donor, or volunteer.

6 (2) Personal financial information, estate planning information,
7 and gift planning information of a donor, prospective donor, or
8 volunteer.

9 (3) Personal information related to a donor's private trusts or
10 a donor's private annuities administered by an auxiliary
11 organization.

12 (4) Information related to fundraising plans, fundraising
13 research, and solicitation strategies to the extent that these
14 activities are not already protected under Section 99040, Title 5
15 (commencing with Section 3426) of Part 1 of Division 4 of the
16 Civil Code, Section 1060 of the Evidence Code, or subdivision (k)
17 of Section 6254 of the Government Code.

18 (5) The identity of students and alumni to the extent that this
19 information is already protected under state and federal statutes
20 applicable to the California Community Colleges. This paragraph
21 shall not apply to a part-time or full-time employee of the auxiliary
22 organization, or to a student who participates in a legislative body
23 of a student body organization that operates on a campus of a
24 California Community College.

25 (b) Subdivision (a) shall not be construed to exempt from
26 disclosure records that contain information regarding any of the
27 following:

28 (1) The amount and date of a donation.

29 (2) Any donor-designated use or purpose of a donation.

30 (3) Any other donor-imposed restrictions on the use of a
31 donation.

32 (4) (A) The identity of a donor who, in any fiscal year, makes
33 a gift or gifts, in a quid pro quo arrangement, where either the
34 value of the benefit received is in excess of two thousand five
35 hundred dollars (\$2,500) or the benefit would be impermissible
36 under state or federal law. In these circumstances, records
37 pertaining to the gift or gifts maintained by an auxiliary
38 organization that would otherwise be exempt from disclosure under
39 subdivision (a) shall be disclosed.

1 (B) Annually, on January 1, the monetary threshold set forth in
2 subparagraph (A) shall be adjusted upward or downward to reflect
3 the percentage change in the Consumer Price Index, as calculated
4 by the United States Bureau of Labor Statistics, rounded off to the
5 nearest one thousand dollars (\$1,000).

6 (5) Self-dealing transactions, including, but not limited to, loans
7 of money or property, or material financial interests of or between
8 auxiliary officers or directors and an auxiliary organization, as
9 set forth in Sections 5233 and 5236 of the Corporations Code. In
10 these circumstances, records pertaining to the self-dealing
11 transactions maintained by an auxiliary organization that would
12 otherwise be exempt from disclosure under subdivision (a) shall
13 be disclosed.

14 (6) Any instance in which a volunteer or donor of a gift is
15 awarded, within five years of the date of the service or gift, a
16 contract from the university or auxiliary organization that was
17 not subject to competitive bidding. In these circumstances, records
18 pertaining to the service or gift maintained by an auxiliary
19 organization that would otherwise be exempt from disclosure under
20 paragraph (1) of subdivision (a) shall be disclosed.

21 72697. Any person may institute proceedings for injunctive or
22 declarative relief or writ of mandate in any court of competent
23 jurisdiction to enforce his or her right to inspect or to receive a
24 copy of any record or class of records maintained by an auxiliary
25 organization under this article. The times for responsive pleadings
26 and for hearings in these proceedings shall be set by the judge of
27 the court with the object of securing a decision as to these matters
28 at the earliest possible time.

29 72698. (a) Whenever it is made to appear by verified petition
30 to the superior court of the county where the records or some part
31 thereof are situated that certain records maintained by an auxiliary
32 organization are being improperly withheld from a member of the
33 public, the court shall order the officer or person charged with
34 withholding the records to disclose the record or show cause why
35 he or she should not do so. The court shall decide the case after
36 examining the record in camera, if permitted by subdivision (b)
37 of Section 915 of the Evidence Code, papers filed by the parties,
38 and any oral argument and additional evidence as the court may
39 allow.

1 ***(b) If the court finds that an auxiliary organization official's***
2 ***decision to refuse disclosure is not justified under this article, he***
3 ***or she shall order the official to make the record public. If the***
4 ***judge determines that the official was justified in refusing to make***
5 ***the record public, he or she shall return the item to the official***
6 ***without disclosing its content with an order supporting the decision***
7 ***refusing disclosure.***

8 ***(c) An order of the court, either directing disclosure by an***
9 ***auxiliary organization or supporting the decision of the auxiliary***
10 ***organization official refusing disclosure, is not a final judgment***
11 ***or order within the meaning of Section 904.1 of the Code of Civil***
12 ***Procedure from which an appeal may be taken, but shall be***
13 ***immediately reviewable by petition to the appellate court for the***
14 ***issuance of an extraordinary writ. Upon entry of any order***
15 ***pursuant to this section, a party shall, in order to obtain review***
16 ***of the order, file a petition within 20 days after service upon him***
17 ***or her of a written notice of entry of the order, or within such***
18 ***further time not exceeding an additional 20 days as the trial court***
19 ***may for good cause allow. If the notice is served by mail, the period***
20 ***within which to file the petition shall be increased by five days. A***
21 ***stay of an order or judgment shall not be granted unless the***
22 ***petitioning party demonstrates it will otherwise sustain irreparable***
23 ***damage and probable success on the merits. Any person who fails***
24 ***to obey the order of the court shall be cited to show cause why he***
25 ***or she is not in contempt of court.***

26 ***(d) The court shall award court costs and reasonable attorney's***
27 ***fees to the plaintiff should the plaintiff prevail in litigation filed***
28 ***pursuant to this section. The costs and reasonable attorney's fees***
29 ***shall be paid by the auxiliary organization of which the official is***
30 ***a member or employee and shall not become a personal liability***
31 ***of the auxiliary organization official. If the court finds that the***
32 ***plaintiff's case is clearly frivolous, the court shall award court***
33 ***costs and reasonable attorney's fees to the auxiliary organization.***

34 72699. ***(a) Notwithstanding any other provision of law, and***
35 ***except as provided for in subdivision (c), whenever an auxiliary***
36 ***organization discloses a record it maintains that is otherwise***
37 ***exempt from this article, this disclosure shall constitute a waiver***
38 ***of the exemptions specified in this article.***

39 ***(b) For purposes of this section, "auxiliary organization"***
40 ***includes a member, agent, volunteer, or officer of the auxiliary***

1 organization acting within the scope of his or her affiliation with
2 the auxiliary.

3 (c) Subdivision (a) shall not apply to the following disclosures:

4 (1) Disclosures made to a donor or prospective donor with
5 regard to that donor's donation or prospective donation to an
6 auxiliary organization.

7 (2) Disclosures made to a volunteer or prospective volunteer
8 with respect to that volunteer's services being provided to the
9 auxiliary organization.

10 (3) Disclosures made through other legal proceedings or as
11 otherwise required by law.

12 (4) Disclosures within the scope of a disclosure required by law
13 that limits disclosure of specified writings to certain purposes.

14 (5) Disclosures described in subdivision (a) of Section 72696
15 to an auditor conducting an audit.

16 (6) Disclosures described in subdivision (a) of Section 72696
17 to a bank or similar financial institution in the course of ordinary
18 financial transactions, or in response to a request from the bank
19 or other financial institution relating to the ordinary delivery of
20 financial services.

21 72700. Any provision in a contract entered into after the
22 effective date of this article between an auxiliary and another party
23 that would prevent the disclosure of information required to be
24 disclosed pursuant to this article is void and unenforceable, and
25 such a provision shall not justify a failure to comply with the
26 requirements of this article.

27 72701. This article shall not apply to any records subject to a
28 request made pursuant to the California Public Records Act, as
29 set forth in Chapter 3.5 (commencing with Section 6250) of
30 Division 7 of Title 1 of the Government Code.

31 ~~SECTION 1.~~

32 SEC. 2. Article 1.5 (commencing with Section 89913) is added
33 to Chapter 7 of Part 55 of Division 8 of Title 3 of the Education
34 Code, to read:

35
36 Article 1.5. California State University Auxiliary Organizations
37 Transparency and Accountability Act of 2011

38
39 89913. The Legislature finds and declares all of the following:

1 (a) Access to information concerning the conduct of the people's
2 business is a necessary and fundamental right of every person in
3 this state.

4 (b) California State University auxiliary organizations promote
5 and assist the Trustees of the California State University by
6 engaging in activities that are essential and integral to the mission
7 and purpose of the California State University.

8 (c) California State University auxiliary organizations are
9 independently governed corporations that are legally separate from
10 the California State University.

11 (d) Access to records used, owned, or maintained by auxiliary
12 organizations must be balanced by the need to protect the individual
13 privacy rights of donors and volunteers, and to protect an auxiliary
14 organization's fiduciary interests.

15 89913.5. For purposes of this article, the following terms have
16 the following meanings:

17 (a) "Auxiliary organization" means those entities defined in
18 Section 89901.

19 (b) "Identifiable writing" means any handwriting, typewriting,
20 printing, photostating, photographing, photocopying, transmitting
21 by electronic mail or facsimile, and every other means of recording
22 upon any tangible thing, any form of communication or
23 representation, including, but not limited to, letters, words, pictures,
24 sounds, or symbols, or combinations thereof, and any record
25 thereby created, regardless of the manner in which the record has
26 been stored.

27 89914. (a) Records maintained by an auxiliary organization
28 shall be available to the public to inspect or copy at all times during
29 the office hours of the auxiliary organization, *except as hereafter*
30 *provided*. The records subject to inspection or copying by the
31 public pursuant to this section shall include any identifiable writing
32 containing information relating to the conduct of the auxiliary
33 organization that is prepared, owned, used, or retained by an
34 auxiliary organization. Any reasonably segregable portion of a
35 record shall be promptly available for inspection and copying after
36 redacting those portions exempt from disclosure by law.

37 (b) Upon a ~~written~~ request for a copy of a record that reasonably
38 describes an identifiable record, an auxiliary organization shall
39 make the record promptly available within a reasonable time to
40 any person upon payment of fees covering only the direct cost of

1 duplication, except with respect to records maintained by an
2 auxiliary organization exempt from disclosure by law. Nothing in
3 this article shall be construed to permit an auxiliary organization
4 to delay or obstruct the inspection or copying of public records.

5 (c) If a member of the public requests to inspect a public record
6 or obtain a copy of a record held by an auxiliary organization, the
7 organization shall assist the person to make a focused and effective
8 request that reasonably describes an identifiable record or records.

9 89914.5. (a) Upon a written request for a copy *or inspection*
10 of records, an auxiliary organization shall determine, within 10
11 calendar days from the receipt of the request, whether the request,
12 in whole or in part, seeks copies of disclosable records maintained
13 by the auxiliary organization and shall notify the requester in
14 writing without undue delay of the determination and the reasons
15 therefor.

16 (b) (1) *In unusual circumstances, the time limit prescribed in*
17 *this section may be extended by a written notice by the head of the*
18 *auxiliary organization, or his or her designee, to the person making*
19 *the request that sets forth the reasons for the extension and the*
20 *date on which a determination is expected to be sent. That notice*
21 *shall not specify a date that would result in an extension of more*
22 *than 14 days. When the auxiliary organization sends the*
23 *determination, and if the auxiliary organization determines that*
24 *the request seeks disclosable public records, the auxiliary*
25 *organization shall state the estimated date and time when the*
26 *records will be made available.*

27 (2) *As used in this section, “unusual circumstances” means the*
28 *following, but only to the extent reasonably necessary to the proper*
29 *processing of the particular request:*

30 (A) *The need to search for and collect the requested records*
31 *from field facilities or other establishments that are separate from*
32 *the office processing the request.*

33 (B) *The need to search for, collect, and appropriately examine*
34 *a voluminous amount of separate and distinct records that are*
35 *demanding in a single request.*

36 (C) *The need for consultation, which shall be conducted with*
37 *all practicable speed, with another agency having a substantial*
38 *interest in the determination of the request or among two or more*
39 *components of the agency having a substantial subject matter*
40 *interest therein.*

1 (D) *The need to compile data, to write programming language*
2 *or a computer program, or to construct a computer report to*
3 *extract data.*

4 ~~(b)~~

5 (c) An auxiliary organization shall justify withholding a record
6 by demonstrating that the record is exempt from disclosure by law,
7 or that, on the facts of the particular request, the public interest
8 served by not disclosing the record clearly outweighs the public
9 interest served by disclosure of the record.

10 ~~(e)~~

11 (d) A response to a written request for inspection or copies of
12 public records that includes a determination that the request is
13 denied, in whole or in part, shall be in writing and shall set forth
14 the names and titles or positions of each person responsible for
15 the denial.

16 ~~(d)~~

17 (e) This article shall not limit access to a public record on the
18 basis of the purpose for which the record is being requested, if the
19 record is otherwise subject to disclosure.

20 89915. (a) Unless otherwise prohibited by law, an auxiliary
21 organization that has information that constitutes an identifiable
22 record not exempt from disclosure pursuant to this chapter that is
23 in an electronic format shall make that record available in an
24 electronic format when requested by any person and, when
25 applicable, shall comply with both of the following:

26 (1) An auxiliary organization shall make an electronic record
27 available in the electronic format in which it holds the information.

28 (2) An auxiliary organization shall provide a copy of an
29 electronic record in the format requested if the requested format
30 is one that has been used by the auxiliary organization to create
31 copies for its own use or for provision to other entities or persons.
32 The cost of duplication shall be limited to the direct cost of
33 producing a copy of a record in an electronic format.

34 (b) Notwithstanding paragraph (2) of subdivision (a), the
35 requester shall bear the cost of producing a copy of the record,
36 including the cost to construct a record, and the cost of
37 programming and computer services necessary to produce a copy
38 of the record if either of the following applies:

39 (1) In order to comply with the provisions of subdivision (a),
40 an auxiliary organization would be required to produce a copy of

1 an electronic record and the record is one that is produced only at
2 otherwise regularly scheduled intervals.

3 (2) The request would require data compilation, extraction, or
4 programming to produce the record.

5 (c) If a request is for a record in a nonelectronic format, and the
6 record is also available in an electronic format, an auxiliary
7 organization may inform the requester that the record is available
8 in an electronic format.

9 (d) Nothing in this section shall be construed to do any of the
10 following:

11 (1) Require an auxiliary organization to reconstruct a record in
12 an electronic format if the auxiliary organization no longer has the
13 record available in an electronic format.

14 (2) Permit an auxiliary organization to make a record available
15 only in an electronic format.

16 (3) Require an auxiliary organization to release an electronic
17 record in the electronic form in which it is held by the auxiliary
18 organization if its release would jeopardize or compromise the
19 security or integrity of the original record, or of any proprietary
20 software with which it is maintained.

21 (4) Permit public access to records held by an auxiliary
22 organization to which access is otherwise restricted by law.

23 89915.5. Nothing in this article shall require an auxiliary
24 organization to disclose information that is exempt from disclosure
25 pursuant to the exemptions set forth under Sections 6254 to
26 ~~6254.29~~ 6255, inclusive, of the Government Code.

27 89916. (a) Notwithstanding any other law, the following
28 records maintained by an auxiliary organization shall not be subject
29 to disclosure:

30 (1) Information that would disclose the identity of a donor,
31 prospective donor, or volunteer.

32 (2) Personal financial information, estate planning information,
33 and gift planning information of a donor, *prospective donor*, or
34 volunteer.

35 (3) Personal information related to a donor's private trusts or a
36 donor's private annuities administered by an auxiliary organization.

37 (4) Information related to fundraising plans, fundraising
38 research, and solicitation strategies to the extent that these activities
39 are not already protected under Section 99040, Title 5
40 (commencing with Section 3426) of Part 1 of Division 4 of the

1 Civil Code, Section 1060 of the Evidence Code, or subdivision
2 (k) of Section 6254 of the Government Code.

3 (5) The identity of students and alumni to the extent that this
4 information is already protected under state and federal statutes
5 applicable to the California State University. This paragraph shall
6 not apply to a part-time or full-time employee of the auxiliary
7 organization, or to a student who participates in a legislative body
8 of a student body organization as defined in Section 89305.1.

9 (b) Subdivision (a) shall not be construed to exempt from
10 disclosure records that contain information regarding any of the
11 following:

12 (1) The amount and date of a donation.

13 (2) Any donor-designated use or purpose of a donation.

14 (3) Any other donor-imposed restrictions on the use of a
15 donation.

16 (4) (A) The identity of a donor who, in any ~~calendar~~ or fiscal
17 year, makes a gift or gifts, in a quid pro quo arrangement, where
18 either the value of the benefit received is in excess of two thousand
19 five hundred dollars (\$2,500) or the benefit would be impermissible
20 under state or federal law. In these circumstances, records
21 pertaining to the gift or gifts maintained by an auxiliary
22 organization that would otherwise be exempt from disclosure under
23 subdivision (a) shall be disclosed.

24 (B) Annually, on January 1, the monetary threshold set forth in
25 subparagraph (A) shall be adjusted upward or downward to reflect
26 the percentage change in the Consumer Price Index, as calculated
27 by the United States Bureau of Labor Statistics, rounded off to the
28 nearest one thousand dollars (\$1,000).

29 (5) Self-dealing transactions, including, but not limited to, loans
30 of money or property, or material financial interests of or between
31 auxiliary officers or directors and an auxiliary organization, as set
32 forth in Sections 5233 and 5236 of the Corporations Code. In these
33 circumstances, records pertaining to the self-dealing transactions
34 maintained by an auxiliary organization that would otherwise be
35 exempt from disclosure under subdivision (a) shall be disclosed.

36 (6) Any instance in which a volunteer or donor of a gift is
37 awarded, within five years of the date of the service or gift, a
38 contract from the university or auxiliary organization that was not
39 subject to competitive bidding. In these circumstances, records
40 pertaining to the service or gift maintained by an auxiliary

1 organization that would otherwise be exempt from disclosure under
2 paragraph (1) of subdivision (a) shall be disclosed.

3 89916.5. (a) Notwithstanding any provision of law, trade
4 secrets, as defined in Section 3426.1 of the Civil Code, shall not
5 be subject to disclosure. This information shall be redacted from
6 auxiliary organization records before disclosure.

7 (b) For purposes of this section, “trade secrets” means
8 information, including a formula, pattern, compilation, program,
9 device, method, technique, or process, that does both of the
10 following:

11 (1) Derives independent economic value, actual or potential,
12 from not being generally known to the public or to other persons
13 who can obtain economic value from its disclosure or use.

14 (2) Is the subject of efforts that are reasonable under the
15 circumstances to maintain its secrecy.

16 89917. Any person may institute proceedings for injunctive or
17 declarative relief or writ of mandate in any court of competent
18 jurisdiction to enforce his or her right to inspect or to receive a
19 copy of any record or class of records maintained by an auxiliary
20 organization under this article. The times for responsive pleadings
21 and for hearings in these proceedings shall be set by the judge of
22 the court with the object of securing a decision as to these matters
23 at the earliest possible time.

24 89917.5. (a) Whenever it is made to appear by verified petition
25 to the superior court of the county where the records or some part
26 thereof are situated that certain records maintained by an auxiliary
27 organization are being improperly withheld from a member of the
28 public, the court shall order the officer or person charged with
29 withholding the records to disclose the record or show cause why
30 he or she should not do so. The court shall decide the case after
31 examining the record in camera, if permitted by subdivision (b)
32 of Section 915 of the Evidence Code, papers filed by the parties,
33 and any oral argument and additional evidence as the court may
34 allow.

35 (b) If the court finds that an auxiliary organization official’s
36 decision to refuse disclosure is not justified under this article, he
37 or she shall order the official to make the record public. If the judge
38 determines that the official was justified in refusing to make the
39 record public, he or she shall return the item to the official without

1 disclosing its content with an order supporting the decision refusing
2 disclosure.

3 (c) An order of the court, either directing disclosure by an
4 auxiliary organization or supporting the decision of the auxiliary
5 organization official refusing disclosure, is not a final judgment
6 or order within the meaning of Section 904.1 of the Code of Civil
7 Procedure from which an appeal may be taken, but shall be
8 immediately reviewable by petition to the appellate court for the
9 issuance of an extraordinary writ. Upon entry of any order pursuant
10 to this section, a party shall, in order to obtain review of the order,
11 file a petition within 20 days after service upon him or her of a
12 written notice of entry of the order, or within such further time not
13 exceeding an additional 20 days as the trial court may for good
14 cause allow. If the notice is served by mail, the period within which
15 to file the petition shall be increased by five days. A stay of an
16 order or judgment shall not be granted unless the petitioning party
17 demonstrates it will otherwise sustain irreparable damage and
18 probable success on the merits. Any person who fails to obey the
19 order of the court shall be cited to show cause why he or she is not
20 in contempt of court.

21 (d) The court shall award court costs and reasonable attorney's
22 fees to the plaintiff should the plaintiff prevail in litigation filed
23 pursuant to this section. The costs and reasonable attorney's fees
24 shall be paid by the auxiliary organization of which the official is
25 a member or employee and shall not become a personal liability
26 of the auxiliary organization official. If the court finds that the
27 plaintiff's case is clearly frivolous, the court shall award court
28 costs and reasonable attorney's fees to the auxiliary organization.

29 89918. (a) Notwithstanding any other provision of law, and
30 except as provided for in subdivision (c), whenever an auxiliary
31 organization discloses a record it maintains that is otherwise
32 exempt from this article, this disclosure shall constitute a waiver
33 of the exemptions specified in this article.

34 (b) For purposes of this section, "auxiliary organization"
35 includes a member, agent, volunteer, or officer of the auxiliary
36 organization acting within the scope of his or her affiliation with
37 the auxiliary.

38 (c) Subdivision (a) shall not apply to the following disclosures:

1 (1) Disclosures made to a donor or prospective donor with regard
2 to that donor's donation or prospective donation to an auxiliary
3 organization.

4 (2) Disclosures made to a volunteer or prospective volunteer
5 with respect to that volunteer's services being provided to the
6 auxiliary organization.

7 (3) Disclosures made through other legal proceedings or as
8 otherwise required by law.

9 (4) Disclosures within the scope of a disclosure required by law
10 that limits disclosure of specified writings to certain purposes.

11 (5) *Disclosures described in subdivision (a) of Section 89916*
12 *to an auditor conducting an audit.*

13 (6) *Disclosures described in subdivision (a) of Section 89916*
14 *to a bank or similar financial institution in the course of ordinary*
15 *financial transactions, or in response to a request from the bank*
16 *or other financial institution relating to the ordinary delivery of*
17 *financial services.*

18 ~~89918.5. An auxiliary organization shall not allow another~~
19 ~~party to control the disclosure of a record that is otherwise subject~~
20 ~~to disclosure pursuant to this article.~~

21 89918.5. *Any provision in a contract entered into after the*
22 *effective date of this article between an auxiliary and another party*
23 *that would prevent the disclosure of information required to be*
24 *disclosed pursuant to this article is void and unenforceable, and*
25 *such a provision shall not justify a failure to comply with the*
26 *requirements of this article.*

27 89919. This article shall not apply to any records subject to a
28 request made pursuant to the California Public Records Act, as set
29 forth in Chapter 3.5 (commencing with Section 6250) of Division
30 7 of Title 1 of the Government Code.

31 ~~SEC. 2.~~

32 SEC. 3. Chapter 14 (commencing with Section 92950) is added
33 to Part 57 of Division 9 of Title 3 of the Education Code, to read:

34
35 CHAPTER 14. UNIVERSITY OF CALIFORNIA CAMPUS
36 FOUNDATION TRANSPARENCY AND ACCOUNTABILITY ACT OF 2011

37
38 92950. The Legislature finds and declares all of the following:

1 (a) Mindful of the right of individuals to privacy, access to
2 information concerning the conduct of the people’s business is a
3 necessary and fundamental right of every person in this state.

4 (b) University of California campus foundations are
5 independently governed charitable nonprofit corporations that are
6 legally separate from the University of California (UC), but provide
7 important support to the individual campuses of the UC and the
8 UC system as a whole.

9 (c) The release of information maintained by University of
10 California campus foundations to the public must be balanced by
11 the need to protect the individual privacy rights of donors and
12 volunteers and to protect the fiduciary interests of these
13 organizations.

14 92951. As used in this chapter, the following terms have the
15 following meanings:

16 (a) “UC campus foundation” means the following corporations
17 organized under the laws of the State of California: University of
18 California, Berkeley Foundation, UC Davis Foundation, the
19 University of California, Irvine Foundation, the UCLA Foundation,
20 University of California, Merced Foundation, UC Riverside
21 Foundation, U.C. San Diego Foundation, University of California,
22 San Francisco Foundation, UC Santa Barbara Foundation, U.C.
23 Santa Cruz Foundation, and any other foundation authorized by
24 the Regents of the University of California.

25 (b) “Identifiable writing” means any handwriting, typewriting,
26 printing, photostating, photographing, photocopying, transmitting
27 by electronic mail or facsimile, and every other means of recording
28 upon any tangible thing, any form of communication or
29 representation, including, but not limited to, letters, words, pictures,
30 sounds, or symbols, or combinations thereof, and any record
31 thereby created, regardless of the manner in which the record has
32 been stored.

33 92952. (a) Records maintained by a UC campus foundation
34 shall be available to the public to inspect or copy at all times during
35 the office hours of the foundation, *except as hereafter provided*.
36 The records subject to inspection or copying by the public pursuant
37 to this section shall include any identifiable writing containing
38 information relating to the conduct of the UC campus foundation
39 that is prepared, owned, used, or retained by a UC campus
40 foundation. Any reasonably segregable portion of a record shall

1 be promptly available for inspection and copying after redacting
2 those portions exempt from disclosure by law.

3 (b) Upon a ~~written~~ request for a copy of a record that reasonably
4 describes an identifiable record, a UC campus foundation shall
5 make the record available within a reasonable time to any person
6 upon payment of fees covering only the direct cost of duplication,
7 except with respect to records maintained by a UC campus
8 foundation exempt from disclosure by law. Nothing in this chapter
9 shall be construed to permit a UC campus foundation to delay or
10 obstruct the inspection or copying of public records.

11 (c) If a member of the public requests to inspect a public record
12 or obtain a copy of a record held by a UC campus foundation, the
13 UC campus foundation shall assist the person to make a focused
14 and effective request that reasonably describes an identifiable
15 record or records.

16 92953. (a) Upon a written request for a copy *or inspection* of
17 records, a UC campus foundation shall determine, within 10
18 calendar days from the receipt of such request, whether the request,
19 in whole or in part, seeks copies of disclosable records maintained
20 by the UC campus foundation and shall notify the requester in
21 writing without undue delay of the determination and the reasons
22 therefor.

23 (b) (1) *In unusual circumstances, the time limit prescribed in*
24 *this section may be extended by a written notice by the head of the*
25 *UC campus foundation, or his or her designee, to the person*
26 *making the request that sets forth the reasons for the extension*
27 *and the date on which a determination is expected to be sent. That*
28 *notice shall not specify a date that would result in an extension of*
29 *more than 14 days. When the UC campus foundation sends the*
30 *determination, and if the UC campus foundation determines that*
31 *the request seeks disclosable public records, the UC campus*
32 *foundation shall state the estimated date and time when the records*
33 *will be made available.*

34 (2) *As used in this section, “unusual circumstances” means the*
35 *following, but only to the extent reasonably necessary to the proper*
36 *processing of the particular request:*

37 (A) *The need to search for and collect the requested records*
38 *from field facilities or other establishments that are separate from*
39 *the office processing the request.*

1 (B) *The need to search for, collect, and appropriately examine*
2 *a voluminous amount of separate and distinct records that are*
3 *demanding in a single request.*

4 (C) *The need for consultation, which shall be conducted with*
5 *all practicable speed, with another agency having a substantial*
6 *interest in the determination of the request or among two or more*
7 *components of the agency having a substantial subject matter*
8 *interest therein.*

9 (D) *The need to compile data, to write programming language*
10 *or a computer program, or to construct a computer report to*
11 *extract data.*

12 ~~(b)~~

13 (c) A UC campus foundation shall justify withholding disclosure
14 of a record by demonstrating that the record is exempt from
15 disclosure by law, or that, on the facts of the particular request,
16 the public interest served by not disclosing the record clearly
17 outweighs the public interest served by disclosure of the record.

18 ~~(e)~~

19 (d) A response to a written request for inspection or copies of
20 public records that includes a determination that the request is
21 denied, in whole or in part, shall be in writing and shall not set
22 forth the names and titles or positions of each person responsible
23 for the denial.

24 ~~(d)~~

25 (e) This chapter shall not limit access to a public record on the
26 basis of the purpose for which the record is being requested, if the
27 record is otherwise subject to disclosure.

28 92954. (a) Unless otherwise prohibited by law, a UC campus
29 foundation that has information that constitutes an identifiable
30 record not exempt from disclosure pursuant to this chapter that is
31 in an electronic format shall make that record available in an
32 electronic format when requested by any person and, when
33 applicable, shall comply with both of the following:

34 (1) A UC campus foundation shall make the electronic record
35 available in the electronic format in which it holds the information.

36 (2) A UC campus foundation shall provide a copy of an
37 electronic record in the format requested if the requested format
38 is one that has been used by the UC campus foundation to create
39 copies for its own use or for provision to other entities or persons.

1 The cost of duplication shall be limited to the direct cost of
2 producing a copy of a record in an electronic format.

3 (b) Notwithstanding paragraph (2) of subdivision (a), the
4 requester shall bear the cost of producing a copy of the record,
5 including the cost to construct a record, and the cost of
6 programming and computer services necessary to produce a copy
7 of the record if either of the following applies:

8 (1) In order to comply with the provisions of subdivision (a), a
9 UC campus foundation would be required to produce a copy of an
10 electronic record and the record is one that is produced only at
11 otherwise regularly scheduled intervals.

12 (2) The request would require data compilation, extraction, or
13 programming to produce the record.

14 (c) If a request is for a record in a nonelectronic format, and the
15 record is also available in an electronic format, a UC campus
16 foundation may inform the requester that the record is available
17 in an electronic format.

18 (d) Nothing in this section shall be construed to do any of the
19 following:

20 (1) Require a UC campus foundation to reconstruct a record in
21 an electronic format if the UC campus foundation no longer has
22 the record available in an electronic format.

23 (2) Permit a UC campus foundation to make a record available
24 only in an electronic format.

25 (3) Require a UC campus foundation to release an electronic
26 record in the electronic form in which it is held by the UC campus
27 foundation if its release would jeopardize or compromise the
28 security or integrity of the original record or of any proprietary
29 software with which it is maintained.

30 (4) Permit public access to records held by any UC campus
31 foundation to which access is otherwise restricted by law.

32 92955. Nothing in this chapter shall require a UC campus
33 foundation to disclose information that is exempt from disclosure
34 pursuant to the specific exemptions set forth under Sections 6254
35 to ~~6254.29~~ 6255, inclusive, of the Government Code.

36 92956. (a) Notwithstanding any other law, the following
37 records maintained by a UC campus foundation shall not be subject
38 to disclosure:

39 (1) Information that would disclose the identity of a donor,
40 prospective donor, or volunteer.

1 (2) Personal financial information, estate planning information,
2 and gift planning information of a donor, prospective donor, or
3 volunteer.

4 (3) Personal information related to any of a donor's private
5 trusts or a donor's private annuities administered by a UC campus
6 foundation.

7 (4) Information related to fundraising plans, fundraising
8 research, and solicitation strategies to the extent that these activities
9 are not already protected under Section 99040, Title 5
10 (commencing with Section 3426) of Part 1 of Division 4 of the
11 Civil Code, Section 1060 of the Evidence Code, or subdivision
12 (k) of Section 6254 of the Government Code.

13 (5) The identity of students and alumni to the extent that this
14 information is already protected under state and federal statutes
15 applicable to the University of California. This paragraph shall
16 not apply to a part-time or full-time employee of the UC campus
17 foundation, or to a student who participates in a legislative body
18 of a student body organization on a University of California
19 campus.

20 (b) Subdivision (a) shall not be construed to exempt from
21 disclosure records that contain information regarding any of the
22 following:

23 (1) The amount and date of a donation.

24 (2) Any donor-designated use or purpose of a donation.

25 (3) Any other donor-imposed restrictions on the use of a
26 donation.

27 (4) (A) The identity of a donor who, in any ~~calendar~~ or fiscal
28 year, makes a gift or gifts, in a quid pro quo arrangement, where
29 either the value of the benefit received is in excess of two thousand
30 five hundred dollars (\$2,500) or the benefit would be impermissible
31 under state or federal law. In these circumstances, records
32 pertaining to the gift or gifts maintained by a UC campus
33 foundation that would otherwise be exempt from disclosure under
34 subdivision (a) shall be disclosed.

35 (B) Annually, on January 1, the monetary threshold set forth in
36 subparagraph (A) shall be adjusted upward or downward to reflect
37 the percentage change in the Consumer Price Index, as calculated
38 by the United States Bureau of Labor Statistics, rounded off to the
39 nearest one thousand dollars (\$1,000).

(5) Self-dealing transactions, including, but not limited to, loans of money or property, or material financial interests of or between foundation officers or directors and a UC campus foundation, as set forth in Sections 5233 and 5236 of the Corporations Code. In these circumstances, records pertaining to the self-dealing transactions maintained by a UC campus foundation that would otherwise be exempt from disclosure under subdivision (a) shall be disclosed.

(6) Any instance in which a volunteer or donor of a gift is awarded, within five years of the date of the service or gift, a contract from the university or UC campus foundation that was not subject to competitive bidding. In these circumstances, records pertaining to the service or gift maintained by the UC campus foundation that would otherwise be exempt from disclosure under paragraph (1) of subdivision (a) shall be disclosed.

92957. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any record or class of records maintained by a UC campus foundation under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

92958. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain records maintained by a UC campus foundation are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(b) If the court finds that a UC campus foundation official's decision to refuse disclosure is not justified under this chapter, he or she shall order the official to make the record public. If the judge determines that the official was justified in refusing to make the record public, he or she shall return the item to the official without

1 disclosing its content with an order supporting the decision refusing
2 disclosure.

3 (c) An order of the court, either directing disclosure by a UC
4 campus foundation official or supporting the decision of the UC
5 campus foundation official refusing disclosure, is not a final
6 judgment or order within the meaning of Section 904.1 of the Code
7 of Civil Procedure from which an appeal may be taken, but shall
8 be immediately reviewable by petition to the appellate court for
9 the issuance of an extraordinary writ. Upon entry of any order
10 pursuant to this section, a party shall, in order to obtain review of
11 the order, file a petition within 20 days after service upon him or
12 her of a written notice of entry of the order, or within such further
13 time not exceeding an additional 20 days as the trial court may for
14 good cause allow. If the notice is served by mail, the period within
15 which to file the petition shall be increased by five days. A stay
16 of an order or judgment shall not be granted unless the petitioning
17 party demonstrates it will otherwise sustain irreparable damage
18 and probable success on the merits. Any person who fails to obey
19 the order of the court shall be cited to show cause why he or she
20 is not in contempt of court.

21 (d) The court shall award court costs and reasonable attorney's
22 fees to the plaintiff should the plaintiff prevail in litigation filed
23 pursuant to this section. The costs and reasonable attorney's fees
24 shall be paid by the UC campus foundation of which the official
25 is a member or employee and shall not become a personal liability
26 of the UC campus foundation official. If the court finds that the
27 plaintiff's case is clearly frivolous, the court shall award court
28 costs and reasonable attorney's fees to the UC campus foundation.

29 92959. (a) Notwithstanding any other provisions of law, and
30 except as provided for in subdivision (c), whenever a UC campus
31 foundation discloses a record it maintains that is otherwise exempt
32 from this chapter, this disclosure shall constitute a waiver of the
33 exemptions specified in this chapter with regard to that record.

34 (b) For purposes of this section, "UC campus foundation"
35 includes a member, agent, volunteer, or officer of the UC campus
36 foundation acting within the scope of his or her affiliation with a
37 UC campus foundation.

38 (c) Subdivision (a) shall not apply to the following disclosures:

1 (1) Disclosures made to a donor or prospective donor with regard
2 to that donor's donation or prospective donation to a UC campus
3 foundation.

4 (2) Disclosures made to a volunteer or prospective volunteer
5 with respect to that volunteer's services being provided to a UC
6 campus foundation.

7 (3) Disclosures made through other legal proceedings or as
8 otherwise required by law.

9 (4) Disclosures within the scope of a disclosure required by law
10 that limits disclosure of specified writings to certain purposes.

11 (5) *Disclosures described in subdivision (a) of Section 92956*
12 *to an auditor conducting an audit.*

13 (6) *Disclosures described in subdivision (a) of Section 92956*
14 *to a bank or similar financial institution in the course of ordinary*
15 *financial transactions, or in response to a request from the bank*
16 *or other financial institution relating to the ordinary delivery of*
17 *financial services.*

18 ~~92960. A UC campus foundation shall not allow another party~~
19 ~~to control the disclosure of a record that is otherwise subject to~~
20 ~~disclosure pursuant to this chapter.~~

21 92960. *Any provision in a contract entered into after the*
22 *effective date of this chapter between a UC campus foundation*
23 *and another party that would prevent the disclosure of information*
24 *required to be disclosed pursuant to this chapter is void and*
25 *unenforceable, and such a provision shall not justify a failure to*
26 *comply with the requirements of this chapter.*

27 92961. This chapter shall not apply to records subject to any
28 request made pursuant to the California Public Records Act, as set
29 forth in Chapter 3.5 (commencing with Section 6250) of Division
30 7 of Title 1 of the Government Code.